

1. ADVANCE RULING

▪ Takko Holding GmbH [TS-581-AAR-2018-NT]

The Applicant is an extended arm of German legal entity *viz.* Takko Holding GmbH and is functioning as a liaison office as permitted by RBI. The permission of RBI allows Applicant to undertake only a limited set of activities relating to communication between its overseas counterpart and the Indian Suppliers thereto. Applicant do not have any independent business interest. As a matter of fact, Applicant is barred from undertaking any trading, commercial or industrial activity or to enter into any business contracts on its own. The administrative expenses incurred by liaison office are met through reimbursements received from its overseas counterpart.

The key issue brought before the AAR was whether reimbursement of expenses and salary paid by overseas counterpart to liaison office qualify as supply and thereby necessitates liaison office to obtain GST registration and discharge GST liability. The AAR denied the necessity of obtaining registration as well as payment of GST. The decision was based on the findings that Applicant is neither a 'related persons' nor 'distinct persons' but is acting only as an extension of the German Office. The authorities also noted that Applicant is only working as an employee of foreign entity and thus cannot be treated as a 'supplier' thereof.

The ratio of this Ruling reaffirms the findings of Rajasthan AAR in case of Habufa Meubelen B.V. [TS-297-AAR-2018-NT]

▪ National Aluminium Limited [TS-557-AAR-2018-NT]

The Applicant is a manufacturer of calcined alumina and has a refinery at Damanjodi in the State of Odisha. As a part of its business, it has townships at Damanjodi, Angul and residential colony at Bhubaneshwar, runs hospitals for its employees and also has guest houses for touring employees and guests. The Applicant is receiving various services of management, repair and maintenance in relation to the said townships, guest houses, hospitals and horticulture. The key issue in this AAR was whether input tax credit of tax paid on various services of repair and maintenance in township, guest house, hospitals and horticultures can be availed.

The AAR held that ITC of GST paid on services used in relation to residential colony, hospital shall not be available as it has no nexus with manufacturing activity. However, ITC of GST paid on services *qua* guest house(used by employees during tours), transit house and/or training facilities shall be available as the business requires to maintain such facilities. Further, ITC would also be available for services of plantation and maintenance of garden used within the plant area, administration buildings, mining areas and the premises of other business establishments.

▪ Gowra Ventures Pvt. Ltd. [2018-TIOL-231-AAR-GST]

The Applicant, engaged in real estate development activity, owned a piece of land and intended to construct a building on it. Another piece of adjoining land was owned by partners who were also directors of the Applicant company and sought to engage company to jointly construct the building over both the pieces of land after it being amalgamated. Once constructed, the company and partners would be the legal owners of constructed portions as agreed. While the activity of construction was to be undertaken by the company entirely, the cost of construction relating to partners portion was to be paid by partners to Company (The facts narrated is the ruling do not clearly spell out the appropriation of partner's monetary contribution, but it is indicative of being used for the partners share of construction).

A Ruling was sought to determine (i) whether amalgamation of land would constitute supply; (ii) Whether activity of construction undertaken by company, relating to partners share qualifies as 'Supply'; if yes, then determination of its assessable value; (iii) Whether vesting of constructed portion to partners would independently be regarded as 'supply'. The authorities ruled that amalgamation of land

does not qualify as 'supply' as definition of goods is restricted to movable property. Further, the activity of construction undertaken by company, relating to partners share is ruled to be a 'supply of service' and since it is being supplied to 'related person' it needs to be valued at 110% of the cost of provision of such service. Lastly, vesting of constructed portion to Partners was ruled as 'not an independent supply' in absence of any separate consideration/service being received by company from partners in lieu thereof.

▪ **M/s K. P. H Dream Cricket Private Limited [2018-TIOL-206-AAR- GST]**

The Applicant intends to provide complimentary tickets on account of business promotion. In this regard, the Applicant intends to seek clarity on GST implications on issuance of complimentary tickets. The AAR ruled that providing complimentary IPL tickets free of charge to unrelated persons qualifies as 'supply' and is liable for GST based on the following:

- The Applicant is tolerating an act of the persons who are receiving the services without paying any money for which other persons would have to pay for. Tolerance of an act is specifically covered under Schedule II of the CGST Act which *inter alia* enlists the activities either considered as supply of goods or services. Further, in terms of clause (d) of Section 7(1) of the CGST Act activities mentioned in Schedule II are considered as 'supply' wherein consideration is not a pre-requisite. Accordingly, the present activity qualifies as 'supply';
- Without prejudice, it was also held that the definition of 'consideration,' is an inclusive definition and covers monetary value of any act or forbearance. Monetary value of forbearance in the present facts would be the amount of money charged from other persons not receiving the 'complimentary tickets' for enjoying the same services. Thus, it qualifies as 'supply' in terms of Section 7(1)(a) of the CGST Act.

It is important to highlight that the Applicant had made an application for withdrawal of the application as the issue raised is clarified via **Circular No. 47/21/2018- GST dated June 8, 2018**. However, the Authorities did not allow withdrawal of the Application basis the fact that there is no specific provision in the CGST Act in this regard and the Authorities have a opposite view as compared to the Circular.

▪ **Louis Dreyfus Company India Private Limited [TS-569-AAR-2018-NT]**

The Applicant enters into a 'future contract' for sale/purchase of 'cotton' at pre-determined quantity and rate at a specified point in time. These contracts are settled either by actual delivery of goods as per the terms of the contract or by settlement in which the contracting party pays differential amount between rate agreed as per the contract and market rate of the commodity (i.e. cotton in the present facts) as per the commodity exchange. However, in case of settlement of sale contract, the Applicant has discretion to decide the market rate. In this regard, the key issue brought before the Authority was to determine the applicability of GST on the payment received by a party in case of non-execution of future contract.

The AAR observed that (i) future contracts are in the nature of derivatives and qualify as 'securities' as defined in Section 2(101) of the CGST Act which are neither 'goods' nor 'services' and thus do not attract GST (ii) where the future contracts result into actual delivery of underlying commodity, it would be treated as a 'supply of goods' and attracts GST. (iii) Additionally, the AAR also noted that future contract which are settled based on the rate fixed by the Applicant does not qualify as 'derivatives' in terms of the Securities Contracts (Regulation) Act, 1956 and thereby does not fall under the purview of 'securities' to exclude from GST.

2. NOTIFICATIONS

▪ **Notification No. 57/2018-Central Tax dated October 23, 2018 (Exemption from deducting TDS)**

- In terms of Section 51 of the CGST Act read with **Notification No. 50/2018 – Central Tax dated September 13, 2018**; department of Central/State government, local authority, governmental agencies, public sector undertakings etc. are required to deduct TDS from payment made to the supplier where the total value of such supply exceeds INR 2,50,000/-.
- However, exemption from the said provision has been granted to the authorities of Ministry of Defence [other than the Authorities

mentioned in **Annexure A**^[1] of the Notification]. Such exemption is effective from October 01, 2018.

▪ **Notification No. 56/2018-Central Tax dated October 23, 2018 (Exemption from obtaining registration)**

- Casual taxable persons dealing in following goods are exempted from obtaining compulsory registration even though they are undertaking inter-state supply subject to the condition that aggregate turnover does not exceed basic threshold limit:
 - ♦ handicraft goods as mentioned in the Explanation to the Notification No. 21/2018 -Central Tax (Rate), dated July 26, 2018^[2];
 - ♦ products mentioned in the Notification, when they are made by the craftsmen predominantly by hand even though some machinery is used in the process.

3. CIRCULAR

▪ **Trade Circular no. 29T of 2018 dated October 24, 2018 – Maharashtra State**

- Taxpayers have been facing various technical issues *qua* the GSTN portal. In order to reduce such issues and in pursuance of ‘ease of doing business’, Maharashtra State GST department has established dedicated helpdesks in all State GST offices to assist taxpayers in e-filing of various application/forms i.e. registration, return, payment, refund.

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^[1]<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-57-central-tax-english-2018.pdf;jsessionid=61D4900F2C4559A51C850F883BC1DAEA>

^[2]<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-21-2018-cgst-rate-english.pdf;jsessionid=7E6D1B11AF1C56E34F4872BE8AD4F185>